

EXHIBIT 4

Niemann, Robert

September 14, 2007

Baltimore, MD

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

Videotaped Telephone Deposition of ROBERT NIEMANN

Henderson Legal Services
202-220-4158

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<p>1 universally recognized as a sticker price set by 2 manufacturers?</p> <p>3 MS. OBEREMBT: Objection.</p> <p>4 THE WITNESS: And I have to go back to 5 what I said before, what I knew was the IG reports.</p> <p>6 BY MR. COOK:</p> <p>7 Q. You'll certainly agree with me that AWP is 8 commonly understood in the industry to refer to a 9 published sticker price, correct?</p> <p>10 MS. OBEREMBT: Objection.</p> <p>11 THE WITNESS: I've never polled the 12 industry. I really don't know.</p> <p>13 BY MR. COOK:</p> <p>14 Q. You would agree with me that AWP is not 15 commonly understood to represent a calculated average 16 of prices?</p> <p>17 MS. OBEREMBT: Objection.</p> <p>18 THE WITNESS: I guess no matter how you 19 rephrase it, commonly, I don't have information about 20 commonly. I don't have it.</p> <p>21 BY MR. COOK:</p> <p>22 Q. In your experience, do you find that it</p>	<p>1 A. That sentence says that.</p> <p>2 Q. And you would agree with that sentence, 3 correct?</p> <p>4 A. Yes.</p> <p>5 Q. And in fact, the memo goes on to cite 6 several OIG reports in support of that proposition?</p> <p>7 A. Yes.</p> <p>8 Q. And as the sentence goes on, "the OIG 9 studies indicate that acquisition costs can vary from 10 product to product, and from supplier to supplier." 11 Is that what the memorandum suggests?</p> <p>12 A. I'm not sure -- I'm sorry. I'm sure 13 you're right. You're reading it, right?</p> <p>14 Q. Yes, sir.</p> <p>15 A. "AWP may vary from product to product or 16 supplier" -- yes.</p> <p>17 Q. And that was consistent with your 18 understanding at this time that prices for drugs 19 varied from product to product and supplier to 20 supplier?</p> <p>21 A. As reflected in the IG reports.</p> <p>22 Q. Yes, sir. And the last sentence in that</p>
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<p>1 was commonly understood that AWP is not a calculated 2 average of prices?</p> <p>3 MS. OBEREMBT: Objection.</p> <p>4 THE WITNESS: I mean, you know, I'm trying 5 to think of who I talked to. I mean, Mr. Vito felt 6 that way. And some others I talked to felt that way.</p> <p>7 BY MR. COOK:</p> <p>8 Q. So everybody you talked to felt that way?</p> <p>9 A. Well, what's coming to mind at the moment. 10 The five people or so, I guess.</p> <p>11 Q. Okay. And in fact, in the next -- in the 12 next sentence, you indicate that numerous studies 13 have concluded that actual drug prices are well below 14 the AWP rate set by the Medicare program, correct?</p> <p>15 MS. OBEREMBT: Object. He has not 16 testified that he wrote this paragraph, and you keep 17 saying that.</p> <p>18 BY MR. COOK:</p> <p>19 Q. It was inadvertent. I apologize. In the 20 next sentence, the writer of this memorandum states 21 that "numerous studies concluded that actual drug 22 prices are well below the AWP rate," correct?</p>	<p>1 paragraph indicates that "some level of discount is 2 virtually always available." Does that sound like 3 language that you would have written?</p> <p>4 A. I'm trying to absorb it here. The 5 discount -- I don't remember if I -- if I wrote that 6 or not.</p> <p>7 Q. In the 1995 time period, would a document 8 such as this have been typed on a word processor or 9 computer?</p> <p>10 A. I think so.</p> <p>11 Q. What would be the general practice of 12 maintaining a copy of a document like this at 13 Medicare during this time period? Would it be 14 sitting on a stored drive, a shared drive somewhere 15 or in a file folder?</p> <p>16 A. What was it, December? See, we moved in 17 1995 from one building up here to this new building. 18 And who knows what might have happened in that move. 19 If this happened during that move, I thought hard 20 copies were saved. And I thought there would be a 21 disk somewhere. And at some point, you mentioned the 22 shared drives, and these were all possibilities. I'm</p>

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